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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Kimberly Driesen, on behalf of herself and all
10 others similarly situated,

11 Plaintiff,

12 v.

13 RSI Enterprises Incorporated,

14 Defendant.

No. CV-18-08140-PCT-DWL

ORDER

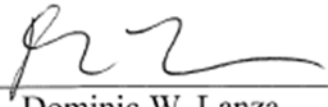
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16 Kimberly Driesen (“Driesen”) alleges that she received a voicemail on February 27,
17 2018 at 10:12 a.m. that provided as follows: “We have an important message from RSI
18 Enterprises. This call is from a debt collector. Call 602-627-2301. Thank you.” (Doc. 1
19 ¶¶ 21-22.) In this lawsuit, Driesen asserts a claim against RSI under the Fair Debt
20 Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* Specifically, Driesen
21 alleges that RSI “violated 15 U.S.C. § 1692e(11) by failing to disclose in its initial
22 communication with [her] that the communication was an attempt to collect a debt and any
23 information obtained would be used for that purpose.” (Doc. 1 ¶ 56.) RSI has, in turn,
24 moved to dismiss under Rule 12(b)(6) on the ground that its alleged failure to comply with
25 § 1692e(11) was immaterial. (Doc. 16.)

26 Before addressing RSI’s motion to dismiss, the Court must assure itself that Driesen
27 has standing, which is a prerequisite to jurisdiction. *Moore v. Maricopa Cty. Sheriff’s*
28 *Office*, 657 F.3d 890, 895 (9th Cir. 2011) (“[T]he Supreme Court has specifically instructed
that a district court must first determine whether it has jurisdiction before it can decide

1 whether a complaint states a claim.”). Here, the complaint seems to allege that a debt
2 collector causes a constitutionally-cognizable injury whenever it violates the FDCPA.
3 (Doc. 1 ¶¶ 4-5). On the one hand, this assertion seems difficult to reconcile with the
4 Supreme Court’s holding in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), that “Congress’
5 role in identifying and elevating intangible harms does not mean that a plaintiff
6 automatically satisfies the injury-in-fact requirement whenever a statute grants a person a
7 statutory right and purports to authorize that person to sue to vindicate that right,” that
8 “Article III standing requires a concrete injury even in the context of a statutory violation,”
9 and that a plaintiff therefore cannot “allege a bare procedural violation, divorced from any
10 concrete harm, and satisfy the injury-in-fact requirement of Article III.” *Id.* at 1549. On
11 the other hand, it nevertheless appears that “the overwhelming majority of district courts
12 to address standing in FDCPA cases have . . . rejected defendants’ post-*Spokeo* standing
13 challenges.” *Byrne v. Oregon One, Inc.*, 2017 WL 3568412, *4 (D. Or. 2017), *report and*
14 *recommendation adopted*, 2017 WL 3568398 (D. Or. 2017).

15 Accordingly, **IT IS ORDERED** that the parties submit supplemental briefs on the
16 following issue: whether Driesen has standing to pursue the claim asserted in her
17 complaint. The deadline for the parties to submit simultaneous briefs on this issue shall be
18 **Friday, January 11, 2019**. No responses or replies to the supplemental briefs are
19 permitted. Each brief shall not exceed 7 pages in length.

20 Dated this 28th day of December, 2018.

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25 Dominic W. Lanza
26 United States District Judge
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